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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

11 ARTURO TORRES OCHOA,

Case No. 3:13-cv-00692-MMD-WGC

12 v. Plaintiff,

ORDER

13 B. SILBER, et al.,

14 Defendants.

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17 This prisoner civil rights action comes before the Court following plaintiff's failure
18 to pay the \$350.00 filing fee in response to the Court's order of December 23, 2013.

19 Pursuant to 28 U.S.C. § 1915(g), "if the prisoner has, on 3 or more prior
20 occasions, while incarcerated or detained in any facility, brought an action or appeal in a
21 court of the United States that was dismissed on the grounds that is frivolous, malicious,
22 or fails to state a claim upon which relief may be granted," he may not proceed *in forma*
23 *pauperis* and instead must pay the full \$350.00 filing fee in advance, unless he is under
24 "imminent danger of serious physical injury." See *Andrews v. King*, 398 F.3d 1113,
25 1123 (9th Cir. 2005); see also *Rodriguez v. Cook*, 169 F.3d 1176, 1178-82 (9th Cir.
26 1999); *Tierney v. Kupers*, 128 F.3d 1310, 1311-12 (9th Cir. 1997).

27 In the order of December 23, 2013, the Court found that, on at least three
28 occasions, the Court has dismissed civil actions commenced by plaintiff while in

1 detention for failure to state a claim for which relief may be granted. (Dkt. no. 3).¹ The
2 Court found that, in the complaint, plaintiff failed to plausibly allege that he is under
3 imminent danger of serious physical injury. (*Id.*). The Court denied plaintiff's
4 application to proceed *in forma pauperis* and ordered he must pay the full filing fee
5 within thirty days or his case would be dismissed, pursuant to 28 U.S.C. § 1915(g).
6 (*Id.*).

7 Plaintiff has not paid the filing fee or otherwise responded to the Court's order of
8 December 23, 2013. Plaintiff, having failed to pay the filing fee for this action and
9 having failed to demonstrate that he is under imminent danger of serious physical injury,
10 has not made the showing required by 28 U.S.C. § 1915(g) to allow his complaint to
11 proceed.

12 It is therefore ordered that this action is dismissed without prejudice for failure to
13 pay the filing fee. The Clerk of Court shall enter final judgment accordingly.

14 DATED THIS 3rd day of February 2014.

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MIRANDA M. DU
UNITED STATES DISTRICT JUDGE

¹See *Ochoa v. Cook, et al.*, 3:02-cv-00450-DWH-RAM; *Ochoa v. Willis, et al.*, 3:02-cv-00545-ECR-VPC (both dismissed for failure to state a claim upon which relief may be granted); *Ochoa v. Putter C/O, et al.*, 3:10-cv-00364-HDM-RAM (dismissed as delusional and factually frivolous). The court takes judicial notice of its prior records in the above matters.